

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)

SDCL 15-6-30 (b)

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RULE 05-04

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A hearing was held on February 17, 2005, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-30(b), and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-30(b) be and it is hereby amended to read in its entirety as follows:

15-6-30(b). Notice of examination--General requirements--Special notice--Nonstenographic recording--Production of documents and things--Deposition of organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the state, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken before expiration of the thirty-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information and belief the statement and supporting facts are true.

If a party shows that when he was served with notice under this subdivision he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the Court orders otherwise, it may be recorded. Unless the Court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the costs for the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the Court otherwise orders. If the deposition is recorded other than stenographically, the officer shall state at the beginning of the recorded tape or other recording medium (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. The officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques.

(5) The notice to a party deponent may be accompanied by a request made in compliance with § 15-6-34 for the production of documents and tangible things at the taking of the deposition. The procedure of § 15-6-34 shall apply to the request.

(6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents,

or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this subsection and § § 15-6-28(a), 15-6-37(a)(1), 15-6-37(b)(1) and 15-6-45(d), a deposition taken by telephone is taken in the jurisdiction and at the place where the deponent is to answer questions propounded to him.

IT FURTHER ORDERED that this rule shall become effective immediately.

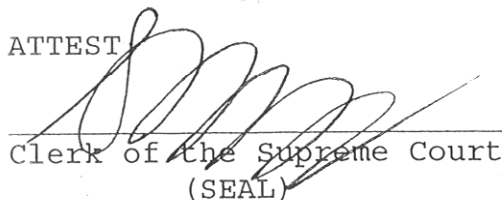
DATED at Pierre, South Dakota, this 25th day of February, 2005.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 25 2005



Clerk